TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~470~~ 247 & 249

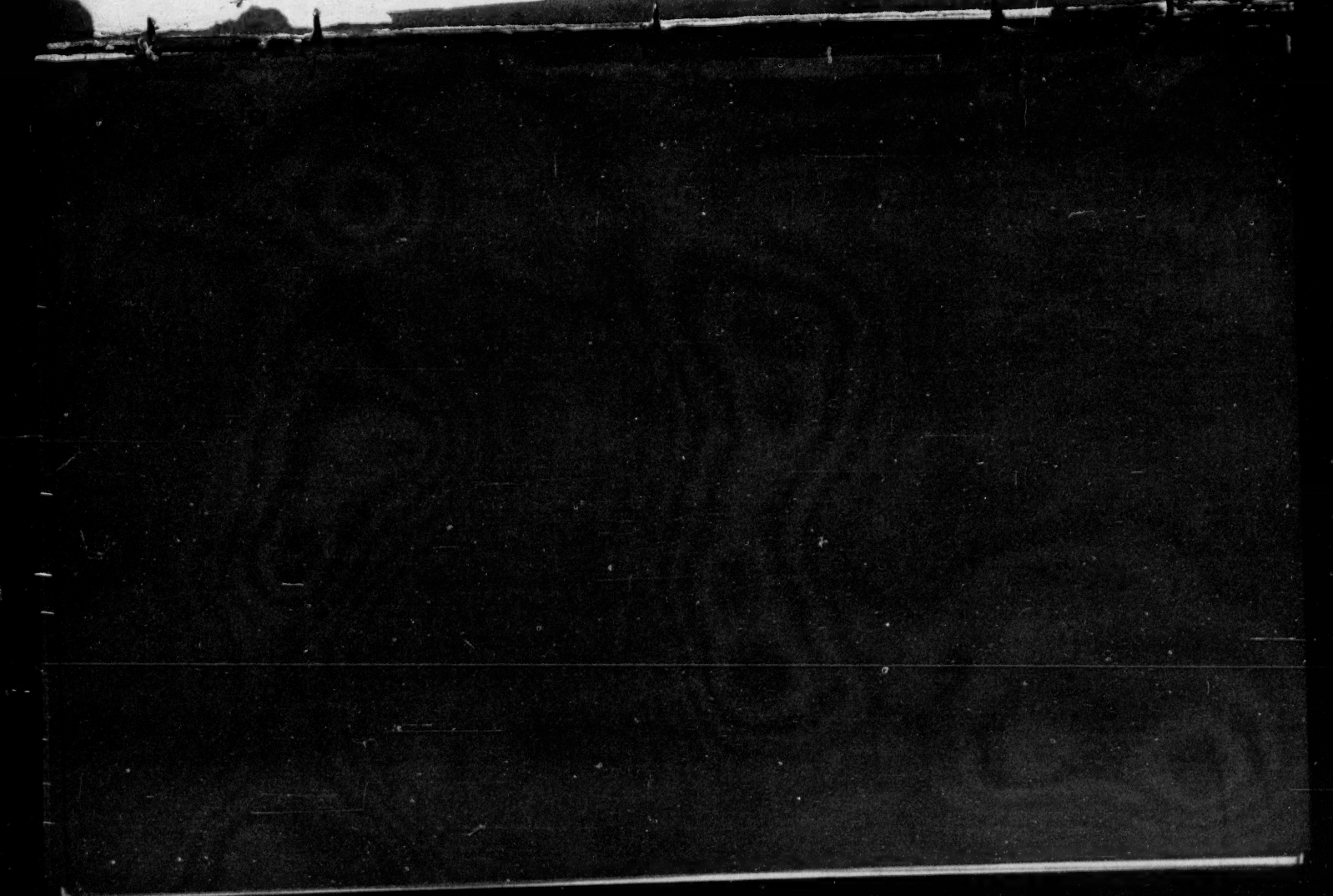
PAUL ESTEBEN, L. RUCH, J. P. ROUEDE, W. MAYLIE, S. FIRMBERG, B. BEAUBAY, WILLIAM FAGAN, J. D. BRODERICK, N. SEIBEL, M. LANNES, J. GITZINGER, J. P. AYCOCK, D. VERGES, THE LIVE STOCK DEALERS AND BUTCHERS' ASSOCIATION OF NEW ORLEANS, AND CHARLES CAVAROC, PLAINTIFFS IN ERROR,

vs.

THE STATE OF LOUISIANA, EX REL. S. BELDEN, ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 30, 1870.



SUPREME COURT OF THE UNITED STATES.

No. 479.

PAUL ESTEBEN, L. RUCH, J. P. ROUEDE, W. MAYLIE, S. FIRMBERG, B. BEAUBAY, WILLIAM FAGAN, J. D. BRODERICK, N. SEIBEL, M. LANNES, J. GITZINGER, J. P. AYCOCK, D. VERGES, THE LIVE STOCK DEALERS AND BUTCHERS' ASSOCIATION OF NEW ORLEANS, AND CHARLES CAVAROC, PLAINTIFFS IN ERROR,

VS.

THE STATE OF LOUISIANA, EX REL. S. BELDEN, ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

Petition.—Filed July 27th, 1869.

THE STATE OF LOUISIANA
vs.
WILLIAM FAGAN & ALS. } No. 809.

To the honorable the judge of the fifth district court in and for the parish of Orleans, Louisiana:

The petition and information of The State of Louisiana, by the attorney general, who officially, on behalf of the State and in his official character, represents that, for the purpose and object of protecting the health of the city of New Orleans, the general assembly of the State of Louisiana, at its last session, enacted a law entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate The Crescent City Live Stock Landing and Slaughter House Company," approved March eighth, (8th,) 1869;
2 that by the expressed provisions of this law all persons are prohibited from slaughtering cattle, hogs, calves, sheep, & goats, the meat of which is determined for sale within the parishes of Orleans, Jefferson, and St. Bernard, except at the slaughter-house established and erected under the provisions and requirements of said law by "The Crescent City Live Stock Landing and Slaughter House Company;" that, as aforesaid, "all animals to be slaughtered, the meat whereof is determined for sale in the parishes of Orleans and Jefferson, must be slaughtered in the slaughter-houses erected by said company or corporation."

Petitioner further represents that the incorporators of the "Crescent City Live Stock Landing and Slaughter House Company," created as aforesaid by the law approved 8th March, 1869, as aforesaid, have complied with the requirements of said act in every particular; that they have established and erected, at their own expense, wharves or landing-places for animals intended for slaughter and slaughter-houses
3 below the present depot of The New Orleans, Opelousas, and Great Western Railroad Company, on the west bank of the Mississippi River, in the parish of Orleans; that said company, having complied with all the requirements of law, and having located stock-landings and slaughter-houses as aforesaid, it is unlawful for any person or persons to slaughter any animals outside of said slaughter house or houses erected and established by said company or corporation and within the territorial limits of the parishes of Orleans, Saint Bernard, and Jefferson, the meat whereof is determined for sale in the parishes aforesaid.

Now, your petitioner further informs this honorable court that Paul Esteban, Louis Ruch, Jean Pierre Rouede, William Maylie, Solomon Firmberg, Barthelemie Beaubay, William Fagan, Jos. Daniel Brodrick, Nicois Seibel, Martin Lannes, Joseph Gitzinger, Jordan P. Aycock, and Dominique Verges have, without any shadow or authority of law,
4 formed themselves into a society or corporation under the name and style of "The Live Stock Dealers and Butchers' Association of New Orleans," by act passed before J. F. Coffey, notary public in and for the parish of Orleans, on the 22d day of July, 1869; that the domicil of said pretended corporation is in the city of New Orleans, and

the president thereof William Fagan, who resides in the city of New Orleans.

Petitioner further informs this honorable court that said pretended corporation has leased, or is about to lease, with the intention of purchasing "a tract of land on the left bank (descending) of the Mississippi River, lying partly in the city of New Orleans and partly in the parish of St. Bernard, known as the Delery Plantation, and now owned by Charles Cavaroc; that said pretended corporation is about to commence, or have commenced, the erection of buildings and structures on said land for the purpose of landing, receiving, stabling, yarding, keeping,
5 and preserving beef cattle, cows, sheep, swine, and other animals designed for food to be sold in the parishes of Orleans, Jefferson, and St. Bernard; that they are also about erecting on said land slaughter-houses and other buildings, manufactories, &c., for the purpose of slaughtering animals for market as aforesaid.

Now, petitioner informs this honorable court that the formation of this pretended corporation, with its purposes and acts, are all in direct violation of, and in contravention to, the said act of the general assembly of the State of Louisiana, approved March 8th, 1869, enacted for the protection of the health of the city of New Orleans and the incorporation of the "Crescent City Live Stock Landing and Slaughter House Company;" that these acts, if not enjoined, will produce irreparable injury; that said pretended corporation has its domicil *within*, & its landing, wharves, pens, slaughter-houses, and structures necessary to keep and slaughter animals for markets, within the territorial limits within
6 which it is prohibited for any other person or persons to slaughter, or to keep slaughter-houses, landings for animals intended to be slaughtered for sale, or houses, or structures to keep them, other than said corporation created by said act, approved March 8th, 1869.

Petitioner further informs this honorable court that there are several suits now pending in the courts of this parish involving the constitutionality of said act of 8th March, 1869; but that, notwithstanding the persons comprising the pretended corporation, styled as aforesaid "The Live Stock Dealers and Butchers' Association of New Orleans," have united, sued out injunction against The Crescent City Live Stock Landing and Slaughter House Company, and under this injunction are proceeding to erect structures and buildings, and slaughter animals for the markets of the parishes of Orleans, Jefferson, and Saint Bernard, in direct violation of the law above cited, and which to their
7 knowledge is in full force and vigor.

Petitioner further represents that the security, happiness, and prosperity of every community depends upon obedience to and recognition of existing laws, and that there is no security or prosperity where a person or persons, individually or collectively, are permitted to disregard laws and override them at will. This is made to appear with double force when we consider in this matter that the questions involved in said suit of said pretended corporation are fully set forth in the other litigation growing out of said law, and which the people of this city and surrounding parishes are calmly awaiting a solution of in the supreme court of Louisiana, where they will be ultimately decided.

Now, petitioner represents and submits to this honorable court that said pretended corporation have no right thus to violate the
8 plain provisions of law; that said law, having been passed to secure and protect the health of this city, it cannot be ignored at will by any person or persons while it remains in force.

Your petitioner further represents and informs this honorable court that the State is interested in seeing her laws maintained and enforced; that the litigation under said act of March 8th, 1869, has assumed such form and such complications as to impress the State, through her official representative, with the absolute necessity for the institution of such suit as to prevent a palpaple violation and disregard of positive law.

Wherefore, the premises considered, your petitioner & informer prays that a writ of injunction issue restraining and enjoining Paul Esteban, Louis Ruch, Jean Pierre Rouede, William Maylie, Solomon Firmberg, Barthelemie Beaubay, William Fagan, Jos. Daniel Brodrick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan P. Aycock, and
9 Dominique Verges from leasing, or, if they should have leased the tract or land known as the Delery Plantation above described, belonging to Charles Cavaroc, from using the same for the purposes of said Live Stock Dealers and Butchers' Association of New Orleans, as herein fully set forth.

He prays that they be enjoined and restrained, individually and in their corporate name, through William Fagan, pretended president, from erecting any docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping, and preserving any beef cattle, cows, sheep, swine, or other animals designed for food in the parishes of Orleans, Jefferson, and St. Bernard.

Petitioner further prays that they also be enjoined and prohibited from slaughtering any beeves, cattle, cows, sheep, swine, or any other animals intended for food in the markets of the parishes of Orleans, Jefferson, and Saint Bernard, except at The Crescent City Live Stock Landing and Slaughter House Company.

10 Petitioner further prays that Charles Cavaroc be enjoined from selling or leasing the above described property to said pretended corporation for the purposes set forth in their pretended act of incorporation.

Petitioner prays that copies of injunction, with petition and citation, be served on defendants herein individually, and on William Fagan, as president of said pretended corporation, and Charles Cavaroc, as required by law. He prays for judgment making injunction perpetual, and for general relief in the premises.

(Signed) SIMEON BELDEN,
Att'y General of the State of Louisiana.

Order.

Let a writ of injunction issue as within prayed for and according to law.

New Orleans, July 27th, 1869.

(Signed) CHA'S LEAUMONT, *Judge.*

Writ of injunction against Charles Cavaroc, July 27th, 1869.

11 THE STATE OF LOUISIANA
vs.
WILLIAM FAGAN & ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

The State of Louisiana to Charles Cavaroc, of New Orleans, greeting:

You are hereby commanded, enjoined, and restrained, in the name of

the State of Louisiana and of the fifth district court for the parish of Orleans, from selling or leasing the tract of land known as the Delery Plantation, on the left bank (descending) of the Mississippi River, lying partly in the city of New Orleans & partly in the parish of St. Bernard, and now owned by you, to the pretended corporation of The Live Stock Dealers and Butchers' Association of New Orleans for the purposes set forth in their pretended act of incorporation.

And you are to remain so enjoined and restrained until the further order of this honorable court.

Witness the Honorable Charles Leaumont, judge of our said
12 court, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States.

(Signed) F. A. LUMINAIS, *D'y Clerk.*

Sheriff's return.

Received July 27th, 1869, and on the 28th day of the same month and year served copy of the within writ of injunction personally on Charles Cavaroc.

Returned same day.

(Signed) M. D. WALSH, *D'y Sheriff.*

Writ of injunction against Paul Esteben et als., July 27th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

The State of Louisiana to Paul Esteben, Louis Ruch, Jean Pierre
13 Rouede, William Maylie, Solomon Firmberg, Bartheleme Beaubay, William Fagan, Jos. Daniel Brodrick, Nichola Seibel, Martin Lannes, Jos. Gitzinger, Jordan J. Aycock, and Dominique Verges, and The Live Stock Dealers and Butchers' Association of New Orleans, through William Fagan, pretended president, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the fifth district court for the parish of Orleans, from leasing, or, if you should have leased the tract or land known as the Delery Plantation, on the left bank (descending) of the Mississippi River, lying partly in the city of New Orleans, and partly in the parish of St. Bernard, and now owned by Charles Cavaroc, from using the same for the purpose of Live Stock Dealers and Butchers' Association of New Orleans, from erecting any docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping, and preserving any beef cattle, cows,
sheep, swine, or other animals designated for food in the parishes
14 of Orleans, Jefferson, and St. Bernard, from slaughtering any beeves, cattle, cows, sheep, swine, or any other animals intended for food in the markets of the parishes of Orleans, Jefferson, & St. Bernard, except at the "Crescent City Live Stock Landing and Slaughter House Company."

And you are so enjoined and restrained until the further order of this honorable court.

Witness the Honorable Cha's Leaumont, judge of our said court, this

27th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States.

(Signed) F. A. LUMINAIS, *D'y Clerk.*

Sheriff's return.

Received, July 27th, 1869, and on the same day, month, and year served a copy of the within injunction personally on J. J. Aycock.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

15 And on the same day, month, and year served copy of the within injunction personally on Mr. Nicola Seibel.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

And on the 3rd day of August, same year, served copy of the within injunction on the following parties, in person: Louis Ruch, Paul Esteben, Jean Pierre Rouede.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

And on the 4th of August, 1869, served a copy of the within writ of injunction on Bartheleme Beaubay, one of the defendants herein, in person.

Returned same day.

(Signed) GEO. H. TARDY, *D'y Sheriff.*

And on the 4th day of August, same year, served copy of the within injunction on The Live Stock Dealers and Butchers' Association, thro' its president, W. Fagan, in person.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

16 And on the same day, month and year served copy of the within injunction on the following parties: W'm Fagan, William Maylie, Martin Lannes.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

And after due and diligent search and inquiry, I was unable to find the said Dominique Verges, or any authorized agent or person to represent him. I was credibly informed that he resides in the parish of Jefferson; therefore, returned not found.

Returned August 5th, 1869.

(Signed) F. PFISTER, *D'y Sheriff.*

And after due and diligent search and inquiry, I was unable to find Joseph Gitzinger, or any authorized person or agent representing him, & I was credibly informed that the said defendant resides in the parish of Jefferson.

Returned August 6th, 1869.

(Signed) F. PFISTER, *D'y Sheriff.*

17 And on the 6th day, same month and year, served copy of the within writ of injunction on Solomon Firmberg, by leaving the

same in the hands of his wife, at his domicil, No 31 Washington street, a person apparently over the age of fourteen years, living and residing in said domicil, and whose name and other facts connected with this service I learned by interrogating said Mrs. Fimberg; that said defendant being absent from home at the time of said service.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

And on the same day, month, and year served copy of the within writ of injunction on Jos. Daniel Brodrick, by leaving the same at his domicil, on the corner of Washington and Fulton streets, in the hands of his wife, a person apparently over the age of fourteen years, living and residing in said domicil, & whose name and other facts connected with this service I learned by interrogating Mrs. Brodrick; said defend-
18 ant being absent from home at the time of said service.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W. FAGAN, ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. CHARLES CAVAROC, *of New Orleans:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the said court, the 28th day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

19 *Sheriff's return.*

Received July 28th, 1869, and on the same day, month, and year served a copy of the within citation and accompanying petition on Charles Cavaroc personally.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. PAUL ESTEBEN:

You are hereby summoned to comply with the demand contained in

the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the court aforesaid, this 28th day of July, in the year of our Lord one thousand
20 eight hundred and sixty-nine.

(Signed) PHILIP POWER, Jr.,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the 3rd day of August, same year, served copy of the within citation and accompanying petition personally on Paul Esteben.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. LOUIS RUCH:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district
21 court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the court aforesaid, this 28th July, in the year of our Lord 1869.

(Signed) PHILIP POWER, Jr.,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the 3d day of August, same year, served copy of the within citation and accompanying petition personally on Louis Ruch.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. JEAN PIERRE ROUEDE:

You are hereby summoned to comply with the demand con-
22 tained in the petition of which a copy accompanies this citation,

or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, & on the 3rd day of August, same year, served copy of the within citation and accompanying petition personally on Jean Pierre Rouede.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

23 STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. WILLIAM MAYLIE:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the court aforesaid, this 28th day of July, 1869.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the fourth day of August, same year, served copy of the within citation and accompanying petition on William Maylie personally.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

24 *Citation.—July 28th, 1869.*

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. SOLOMON FIMBERG:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your

answer to the same, in the office of the clerk of the district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the court aforesaid, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the 6th day of August, same
25 year, served copy of the within citation and acompanying petition on Solomon Fimberg, by leaving the same at his domicil, at No. 31 Washington street, in the hands of his wife, a person apparently over the age of fourteen years, living and residing in said domicil, and whose name and other facts connected with this service I learned by interrogating Mrs. Fimberg; said defendant being absent from home at the time of said service.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
WM FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans.

Mr. BARTHELEME BEAUBAY:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver
26 your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR., *D'y Clerk.*

Sheriff's return.

Received July 28th, 1869, and on the 4th of same month and year served a copy of the within citation and accompanying petition on Bartheleme Beaubay, one of the defendants herein, in person.

Returned same day.

(Signed) GEO. H. TARDY, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
WM FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

27 Mr. WILLIAM FAGAN:

You are hereby summoned to comply with the demand con-

tained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Léaumont, judge of the said court, this 28th July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.
Dep'y Clk.

Sheriff's return.

Received July 28th, 1869, and on the 4th day of August, same year, served a copy of the within citation and accompanying petition personally on Mr. William Fagan.

Returned same day.

(Signed) P. PFISTER, *Dep'y Sh'ff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS.

STATE OF LOUSIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

Mr. JOS. DANIEL BRODERICK:

You are hereby summoned to comply with the demand con-
28 tained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
Dep'y Clerk.

Sheriff's Return.

Received July 28th, 1869, and on the 6th day of August, same year, served copy of the within citation and accompanying petition on Jos. Daniel Broderick, by leaving the same at his domicil on the corner of Fulton and Washington streets, in the hands of his wife, a person apparently of the age of fourteen years, living and residing in said domicil, and whose name and other facts connected with this service I learned by interrogating Mrs. Broderick; said defendant being absent from home at the time of said service.

Returned same day.

(Signed) F. PFISTER, *Dep'y Sh'ff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LA.,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

MR. NICOLAS SEIBEL:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
Dep'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the same day, month, and year served a copy of the within citation and accompanying petition personally on Mr. Nicolas Seibel.

Returned same day.

(Signed) F. PFISTER, *Dep'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LA.:
30 *Fifth District Court for the Parish of Orleans,*
in the City of New Orleans:

MR. MARTIN LANNES:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER,
Dep'y Clerk.

Sheriff's return.

Received July 28th, 1869, and on the 4th day of August, same year, served copy of the within citation and accompanying petition on Martin Lannes personally.

Returned same day.

(Signed) F. PFISTER, *Dep'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs. } No. 809.
W'M FAGAN ET ALS.

STATE OF LA.,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

31 Mr. JOSEPH GITZINGER:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
D'y Clk.

Sheriff's return.

Received July 28th, 1869, and after due diligent search and inquiry, I could not find the said Joseph Gitzinger, or any authorized agent or person to represent him, and I was credibly informed that the said defendant is residing in the parish of Jefferson.

Returned August 6th, 1869.

(Signed) F. PFISTER, *Dep'y Sh'ff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs. } No. 809.
W'M FAGAN ET ALS.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

32 Mr. JORDAN J. AYCOCK:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the court aforesaid, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER,
D'y Clerk.

Sheriff's return.

Received July 28th, 1869, and, after due diligent search and inquiry, I could not find the said Jordan J. Aycock, or any authorized agent or person to represent him, and I was credibly informed that the said defendant is residing in the parish of Jefferson.

Returned August 6th, 1869.

(Signed) F. PFISTER, *D'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

33 Mr. DOMINIQUE VERGES:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the court aforesaid, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
Dep'y Clerk.

Sheriff's return.

Received July 28th, 1869, and, after due and diligent search and inquiry, I could not find the said Dominique Verges, or any authorized person to represent him, and I was credibly informed that he is a resident of the parish of Jefferson.

Returned August 5th, 1869.

(Signed) F. PFISTER, *Dep'y Sheriff.*

Citation.—July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans,
in the City of New Orleans:

M'rs THE LIVE STOCK DEALERS AND BUTCHERS' ASS'ON *of New Orleans,*

34 Through W'M FAGAN, *pretended President:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Leaumont, judge of the said court, this 28th day of July, in the year of our Lord 1869.

(Signed) PHILIP POWER, JR.,
D'y Clk.

Citation's return.

Received July 28th, and on the 4th day of August, same year, served a copy of the within citation and accompanying petition on the Live

Stock Dealers and Butchers' Association, through their president, William Fagan, in person.

Returned same day.

(Signed) F. PFISTER, *D'y Sheriff.*

Motion to bond.—Filed July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court of New Orleans.

On motion of Fellows & Mills, Cotton & Levy, Campbell, Spofford & Campbell, of counsel for the defendants, on suggesting to the court that an injunction has issued in this case, and that the case is susceptible of being bonded—

It is therefore ordered that the plaintiff show cause, on Wednesday, August 11th, 1869, at 10 a. m., why the injunction herein should not be set aside on the defendant executing bond and security in favor of the plaintiff herein, conditioned as the law directs, to answer all such damages as the State will sustain in the premises.

Service accepted.

(Signed) S. BELDEN, *Att'y General.*

Rule to set aside injunction.—Filed July 28th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court for the parish of Orleans.

On motion of Fellows & Mills, Cotton & Levy, Campbell, Spofford and Campbell, of counsel for defendants—

It is ordered that the att'y gen'l show cause, on the 11th day of August, 1869, at 10 a. m., why the injunction should not be set aside
36 and dismissed on the following grounds, to wit:

First. The injunction issued improvidently, as there is no law or authority for such a proceeding on the part of the State.

Second. The question involved in the litigation between the two corporations, as set forth in the petition, is not of a public character; on the contrary, the said corporations are formed under special laws for private corporations, and the att'y gen'l has no authority to bring this suit in the name of the State of La., to oppress the one and to promote the interests of the other.

Third. That *by* the act of the legislature under and by virtue of which this suit is instituted expressly provides that all suits growing out of the same are to be brought in the name of and by The Crescent City Live Stock Landing and Slaughter House Company.

Fourth. That all the matters in controversy in this suit was and is pending in the seventh district court for the parish of Orleans, in the case entitled "The Live Stock Dealers and Butchers' Ass'on of New Orleans vs. The Crescent City Live Stock Landing and Slaughter
37 House Company," No. 1883 of the docket of said court, and consequently said court is vested with the exclusive jurisdiction arising between the said corporations.

Fifth. There is no law or authority authorizing the att'y gen'l to institute these proceedings.

Sixth. The State of Louisiana is without interest in the premises.

Sheriff's return.

Received July 28th, 1869, and on the 29th of same month and year served a copy of the within rule on S. Belden, att'y gen'l, in person.

Returned same day.

(Signed) GEO. H. TARDY, *Dep'y Sh'ff.*

Rule to dissolve injunction.—Filed August 4th, 1869.

STATE OF LOUISIANA
vs.
WM FAGAN ET ALS. } No. 809.

Fifth district court.

On motion of Fellows & Mills, Cotton & Levy, Campbell, Spofford & Campbell, and E. Bermudez, of counsel for defendants, including Cha's Cavaroc, and on suggesting to the court that the injunction herein issued should be quashed for the reasons herein assigned in the
38 rule taken to dissolve it on July 28th, 1869, and for the additional reasons, 1st, that there is no law which authorizes the att'y gen'l to institute a suit of the character of the present one, in the name of the State, and claim the injunction issued; 2nd, that the State has no such interest as would justify the suit or remedy; 3rd, that the enactment purporting to create The Crescent City Live Stock Landing and Slaughter House Company is no law at all, as it was unseasonably signed by the governor, and does not appear to have become a law by the lapse of time; 4th, that these proceedings have instituted for the benefit of said company, under cover of the name of the State, to circumvent, if possible, the injunction issued by the seventh district court against said company; 5th, that the State has abdicated all rights to sue under said enactment in favor of the company created by it, which, if it has any legal existence, is alone justified in the institution of such proceedings; 6th, that said company, even if said enactment is a law, and said company ever had any precarious existence, it is now a defunct corporation, its charter having been forfeited
39 for non-compliance by it with the suspensive conditions, sine quâ non, mentioned in the last paragraph of the third section of said enactment; 7th, that the petition does not disclose sufficient ground for an injunction; 8th, that the petition is not sworn to as the law requires; 9th, that the lease and sale which the writs seek to enjoin had already been entered into and consummated by contract, and by partial payment, prior to the filing of the petition and service of the injunction herein on defendants—

It is ordered that the att'y gen'l show cause, on Wednesday, the 11th August, 1869, at 11 a. m., why the writs of injunction herein issued should not be quashed and returned into court.

Sheriff's return.

Received August 4th, 1869, and on the 5th of same month and year served a copy of the within rule on plaintiff, S. Belden, att'y gen'l, in person.

Returned same day.

(Signed) GEO. H. TARDY, *Dep'y Sheriff.*

Subpœna duces tecum.—Filed August 5th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

40 Fifth district court.

On motion of Cotton and Levy, Fellows and Mills, and E. Bermudez, of counsel for defendants, on suggesting to the court that it is necessary the minute-books, the stock-books, the cash-book, ledger & journal, and the subscription books of the corporation of The Crescent City Live Stock Landing and Slaughter House Company should be produced in court on Wednesday, the 11th day of August, 1869, at 10 a. m., to show the facts set forth in the rule taken to set aside the injunction returnable on said day—

It is therefore ordered that the att'y general, S. Belden, and F. J. Pratt, the president of said company, or the party acting in his place as president, do produce in court, on the 11th day of August, 1869, at 10 a. m., the books described in this motion under the control and belonging to The Crescent City Live Stock Landing and Slaughter House Company.

Sheriff's return.

Received August 5th, 1869, and on the 6th of same month and year served a copy of the within subpœna duces tecum on S. Belden, att'y gen'l, in person.

Returned same day.

(Signed) GEO. H. TARDY, *Dep'y Sheriff.*

41 On the 6th day of same month and year served copy of the within subpœna duces tecum on The Crescent City Live Stock Landing and Slaughter House Company, through W'm McKee, their secretary, who accepted service in the absence of its president.

Returned same day.

(Signed) F. PFISTER, *Dep'y Sheriff.*

Order, rules submitted.

Extract from the minutes, August 11th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

The rules in this case to set aside the injunction herein came on this day for trial—J. B. Cotton, E. Bermundez, and J. Q. A. Fellows, for plaintiffs in rules; S. Belden, att'y gen'l, for the State of La.—when, after hearing arguments of counsel, and rules being submitted, the court took the same under advisement.

Order, rules dismissed.

Extract from the minutes, August 13th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

In this case, the court being of opinion that the law and evi-

42 dence are against plaintiffs in the rules herein taken on the 28th July and on the 4th August, 1869—
It is ordered that said rules be dismissed.

Exception, lis pendens.—Filed Nov. 2nd, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court.

And now come the defendants and plead lis pendens, and say that there is suit pending in the 7th district court of the parish of Orleans, styled "The Live Stock Dealers and Butchers' Asso'n of New Orleans vs. The Crescent City Live Stock Landing and Slaughter House Company," *in* which, as is in substance alleged in the petition in this suit, presents the same identical cause of action, and is about a matter in controversy between the same persons.

Wherefore these respondents pray that this their plea of lis pendens be maintained, and the suit dismissed at the costs of the petitioner.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
COTTON & LEVY,
FELLOWS & MILLS, *Attorneys.*

Order fixing exception.

43 Extract from the minutes, November 6th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

On motion of S. Belden, att'y general—
It is ordered that this cause be fixed for trial on Thursday, 11th instant, at 10 a. m., and that all the defendants be notified.

Notice of trial of exception.—November 6th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court.

To Mess. COTTON & LEVY,
" CAMPBELL, SPOFFORD & CAMPBELL, &
" E. BURMUDEZ, FELLOWS & MILLS, *Att'ys.*

SIRS: Please to take notice that the exception in the above-entitled case is fixed for trial on Thursday, the 11th day of November, 1869, at 10 o'clock a. m.

(Signed) F. A. LUMINAIS,
Dep'y Clerk.

Sheriff's return.

Received November 6th, 1869, and on the 8th of same month and

year served a copy of the within notice of trial on Cotton &
44 Levy, att'ys, by personal service on J. B. Cotton, a member of said firm; also on same day served a similar copy on Campbell, Spofford & Campbell, att'ys, by personal service on Spofford, a member of said firm; also on same day served similar copy on E. Bermudez, att'y, in person; also on same day served similar copy on Fellows & Mills, attorneys, by personal service on J. Q. A. Fellows, a member of said firm.

Returned same day.

(Signed) GEO. H. TARDY,
D'y Sheriff.

Order, exception continued.

Extract from the minutes, November 11th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

The exception is this case is ordered to be continued to be called, and fixed according to law.

Order, exception continued.

Extract from the minutes, November 27th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

The exception in this case is continued to Monday, 29th instant, at 10 o'clock a. m.

45 *Order, exception continued.*

Extract from the minutes, Nov'er 29th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

The exception in this case is ordered to be continued, the answer herein to be filed presenting all issues and legal defences to this suit; the case to be tried with two other cases on the 9th of December, 1869.

Note of evidence.—Filed December 9th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

Defendants offer in evidence on the exception of lis pendens, which is dismissed by the court, the two suits in the "seventh" dist. court, Nos. 1883 & 1537, with the right to use the records without copying them in the transcript. On the merits, the State offers in evidence the

act of incorporation of defendants; also the admissions of facts. Defendants offer testimony of various witnesses taken out of court, to which plaintiffs reserve a bill of exception, and offer in evidence the
46 testimony of other witnesses taken out of court.

Admission of facts.—Filed December 9th, 1869.

Offered in evidence by plaintiff.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

Fifth district court.

It is admitted that the Live Stock Dealers and Butchers' Ass'on had formed themselves into a company, and were about to lease property of Charles Cavaroc, and to build slaughter-houses, etc., thereon, as alleged in petition.

(Signed) FELLOWES & MILLS,
Of Counsel for Def'ts.
(Signed) JA'S P. HORNOR,
Att'y for C. C. L. S. L. & S. H. Co.
(Signed) S. BELDEN, *Att'y General.*

Act of incorporation.

Offered in evidence by pl'ff December 9th, 1869.

STATE OF LOUISIANA } No. 809.
vs.
W'M FAGAN ET ALS. }

Charter.

The Live Stock Dealers and Butchers' Association of New Orleans.

47 STATE OF LOUISIANA, *Parish of Orleans:*

Be it known that on this the twenty-first day of the month of July, A. D. eighteen hundred and sixty-nine, before me, John French Coffey, a notary public in and for the parish aforesaid, commissioned and sworn—

Personally appeared Paul Esteben, Louis Ruch, Jean Pierre Rouede, William Maylie, Solomon Fimberg, Bartheleme Beaubay, William Fagan, Jos. Daniel Brodrick, Nicola Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, and Dominique Verges, all of lawful age, of this and the parish of Jefferson—

Who declare that for themselves, their associates and successors, they hereby form themselves into a joint-stock company, or special corporation, under the private corporation laws of the State of Louisiana; and they hereby adopt the following articles:

ARTICLE FIRST.

The name and style of the corporation shall be The Live Stock Dealers and Butchers' Association of New Orleans.

It shall exist for the term of twenty-five years from the twenty-
48 first day of July, eighteen hundred and sixty-nine, and its domicil shall be in the city of New Orleans.

ARTICLE SECOND.

The corporation is formed for the purpose of purchasing lands, or leasing the same, in or near the city of New Orleans, and of erecting, or permitting members of this association to erect, thereon suitable buildings, with all the necessary implements and machinery thereto attached or connected sufficient for the slaughtering and preparing the meat of all animals designed for food, such as beef cattle, calves, sheep, hogs, &c., and for manufacturing all parts of such animals as may be slaughtered therein as are not suitable for food, and converting the same into articles of commerce and use in the various arts, and to this end to build manufactories of all kinds necessary for this purpose, whether mechanical, chemical, or otherwise, and to erect docks, wharves, landings, stables, provide and arrange yards and enclosures suitable, and such
49 as may be required for the landing, yarding, feeding, keeping, sheltering, and preserving all such animals and other articles of commerce as may be purchased, imported, or brought by the company or any of its members, or any other person or corporation, to the place where the works of the corporation shall be located, and in connection with the slaughtering of animals, and keeping and preparing their meat for food, or manufacturing all such parts of animals as are not used for food into articles of commerce and use in the arts; the whole under the direction and control of a board of managers hereinafter provided for.

ARTICLE THIRD.

The capital stock of the corporation is fixed at three hundred thousand dollars, ($300,000,) the stock to be divided into six thousand shares of fifty dollars ($50) each, and of which ten per cent shall be paid in cash, at the time of subscribing, to the committee of nine heretofore
50 appointed at the meeting of stock-dealers and butchers of New Orleans and Jefferson, and the remainder to be paid, as called for after organization by the board of managers, in installments not oftener than once in every thirty days, nor in sums greater than five per cent. of the amount subscribed.

ARTICLE FOURTH.

Books of subscription shall be opened by the committee of nine designated in article three, and so soon as one hundred thousand dollars ($100,000) of the capital stock shall have been subscribed, the committee of nine receiving the subscription shall give notice to the subscribers in writing, immediately, of the time and place at which the first board of managers are to be elected, and at the hour and place fixed; the committee of nine, or a majority of them, shall assemble and receive the votes of the stockholders, each share of stock having one vote for nine managers, a majority of whom shall form a quorum; and they shall, after the expiration of the time previously fixed by them in
51 their notice, proceed to sort & count the votes cast for managers, and those parties voted for as managers who shall receive the highest number of votes, provided a majority of the stock shall have

been voted, shall be declared elected, and a certificate of their election shall be issued to them by the commissioners of election.

The parties thus elected shall, as soon as may be, meet & organize by the choice of one of their number for president, and of another for vice-president, and they shall elect a secretary and a treasurer.

On the first Monday of each January an annual meeting of the stockholders shall be held, at which a board of managers shall be elected under the regulations as herein provided for the electing the first board, the election to be presided over by the commissioners to be appointed by the board of managers, not of their own number; provided
52 that, should the annual election fail for any cause, another meeting for the election of managers may be held at any subsequent day, after ten days' notice, in two newspapers published in New Orleans, of the time and place of such meeting, and it shall be the duty of the board of managers to issue such notice; and provided further, that one board of managers shall hold over and continue to act until a new election is held.

ARTICLE FIFTH.

The board of managers shall possess and exercise all the powers of the corporation not inconsistent herewith nor contrary to law, and shall at each annual meeting have prepared, and present to the stockholders, a complete statement of the financial affairs of the corporation, sworn to by the secretary.

And should the corporation be dissolved for any cause, or when its charter shall expire, the last board of managers shall proceed with the liquidation of its affairs and the distribution of its assets.

ARTICLE SIXTH.

The company shall have power to sue and be sued in its cor-
53 porate name, and to take all legal proceedings necessary for the interest of the corporation, through its president, on whom all legal processes shall be served.

ARTICLE SEVENTH.

The board of managers shall have power to enact all by-laws, and to elect such other officers as are not herein specified, as may be required for the management and government of the corporation.

ARTICLE EIGHTH.

The slaughter-house and establishment, wharves, docks, landing, stables, yards, and enclosures, and all other public buildings and places required for carrying on the business of the corporation shall be located & erected and fixed on the tract of land known as the Delery Place, owned by Charles Cavaroc, situated and lying partly in the parish of St. Bernard and partly in the parish of Orleans, on the left bank of the Mississippi River, and said buildings and other improvements, yards, &c.,
54 shall, for the present, be built and erected, &c., on that portion of the said tract of land situate and being in the parish of Orleans.

At any subsequent time the buildings and other improvements, yards, and enclosures, &c., may be extended or erected on the other portion of said land, as the necessities of the corporation may require.

Done and signed in the city of New Orleans, on the day aforesaid, in the presence of J. B. Gervais Arnoult and Francis Blust, witnesses, of lawful age, of this parish, who have signed with the appearers, and me, notary, after reading hereof.

(Original signed.)

PAUL ESTEBEN.
J. P. ROUEDE.
S. FIMBERG.
W'M FAGAN.
NIC. SEIBEL.
J. GITZINGER.
DOMINIQUE VERGES.
LOUIS RUCH.
W'M MAYLIE.
B. BEAUBAY.
JOS. D. BRODRICK.
MARTIN LANNES.
J. T. AYCOCK.
J. B. GERVAIS ARNOULT.
FRANCIS BLUST.
PAULIN LASALLE.
J. F. COFFEY, *Notary Public.*

I, the undersigned, notary, certify the foregoing to be a true copy of the original act in my office.

(Signed) J. F. COFFEY,
Notary Public.

NEW ORLEANS, *July 22nd*, 1869.

55 I, the undersigned, deputy recorder of mortgages in and for the parish and city of New Orleans, do hereby certify that the within act of incorporation has this day been duly recorded in this office, book Society 7, folio 316.

A. DUCATEL, JR., *Deputy.*

NEW ORLEANS, *July 23rd*, 1869.

Order, exception overruled and case submitted.

December 9, 1869, extract from the minutes.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

The exception of lis pendens in this case came on this day for trial—S. Belden, att'y general, for plaintiff; J. Q. A. Fellowes, J. A. Campbell, and J. B. Cotton for defendants—when, after hearing counsel, said exception was overruled. Whereupon the case was taken up on its merits, and, after hearing evidence, said cause being submitted, the court took the same under advisement.

56 *Peremptory exception and answer.—Filed December 9th*, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court.

And now come the defendants, &, reserving all their rights under the

motions heretofore made by them to dissolve the injunction and the plea of lis pendens filed herein and dismissed or overruled, and further pleading by way of exception and answer, say—

1st. That there is no law nor authority for proceedings such as are attempted in this suit on the part of The State of Louisiana either as to matter or form; that the questions involved in this suit, and as set forth in the petition, are not of a public character, as therein alleged; that, on the contrary, the corporations named therein are private corporations, formed under and by virtue of special laws enacted for the purpose of the formation of private corporations; that the attorney general
57 has no authority to bring this suit in his official capacity, or in the name of the State of Louisiana, nor to use the name of the State to favor one of the corporations named in the suit to the prejudice of the interests and rights of other corporations or individuals; that the State has no interest in the matters in controversy in this suit.

2nd. That, by the enactment alluded to in the petition, the State has abdicated all right to sue in this behalf, and abandoned said right in it entirely to The Crescent City Live Stock Landing and Slaughter House Company, created as alleged by said enactment; and that said corporation, if it has any legal existence, is alone entitled to sue and use its own name to carry on all proceedings of whatever kind growing out of said enactment.

3rd. That the enactment of the 8th of March, 1869, the provisions of which this suit seeks to enforce, creating The Crescent City Live Stock Landing and Slaughter House Company, is in violation of the
58 constitution of this State and of the United States, and is unconstitutional, null and void, and is no law.

4th. That said enactment has never yet become a law, not having been perfected and signed by the governor of the State during the session of the legislature of the State for the year 1869, nor within the sixty days after the first day of said session, as required by the constitution of the State.

5°. That the petition has never been sworn to as to its truth, and does not authorize or warrant the perpetuation of the injunction, as prayed for.

6th. That the object of this suit and the act which it seeks to enforce is in derogation of common right, and seeks to maintain and perpetuate a grinding and oppressive monopoly, and to take away the property and rights of one citizen to vest the same in another, and without a just compensation.

7th. That the petition discloses no cause of action as against these defendants.

59 8th. That the enactment sought to be enforced in these proceedings is no law, nor binding upon these respondents, the passage of the same through the legislature having been obtained by the bribery and corruption of the members of said legislature and the purchase of the votes of said members for the purpose of private greed and gain, and to the detriment and injury of these respondents.

9th. That said Slaughter House Company had not, on the 1st of June, 1869, complied with the provisions of said enactment by which it pretends to have its existence, in having erected suitable buildings, wharves, slaughter-houses, &c., nor had it even organized itself into a regular corporation.

And, further answering, respondents deny all and singular the allegations contained in this petition, and pray that this suit be dismissed,

with costs, and for judgment in their favor, and for all general and equitable relief.

(Signed) FELLOWS AND MILLS,
" COTTON AND LEVY,
" CAMPBELL, SPOFFORD AND CAMPBELL,
Att'ys.

Judgment.—December 10th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

In this case, the court being of opinion that the law and evidence are in favor of plaintiff—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, The State of Louisiana, and against defendants, Paul Esteben, Louis Ruch, Jean Pierre Rouede, William Maylie, Solomon Fimberg, Barthelemy Beaubay, William Fagan, Joseph Daniel Brodrick, Nicola Seibel, Martin Lannes, Joseph Gitzinger, Jordan J. Aycock, and Dominique Verges, perpetuating the injunction herein issued, and that the said defendants be forever enjoined and restrained from leasing or using
the tract of land known as the Delery Plantation, belonging to
61 Charles Cavaroc, for the purpose of landing, receiving, stabling, yarding, keeping, and preserving beef cattle, cows, sheep, swine, and other animals destined for slaughter or sale in the parishes of Orleans, Jefferson, and St. Bernard; that the said defendants be enjoined and restrained individually and in their corporate name of Live Stock Dealers and Butchers' Association of New Orleans, through William Fagan, president, from erecting any docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping, and preserving any beef cattle, cows, sheep, swine, or other animals destined for food or sale in the parishes of Orleans, Jefferson, and St. Bernard; that they be forever enjoined and prohibited from slaughtering any beeves, cattle, cows, sheep, swine, or any other animals intended for food in the markets of the parishes of
Orleans, Jefferson, and St. Bernard, except at The Crescent City
62 Live Stock Landing and Slaughter House Company; and, finally, that Charles Cavaroc be enjoined from selling the above-described property to the said Live Stock Dealers and Butchers' Association of New Orleans for the purposes set forth in their act of incorporation.

It is further ordered that said defendants pay the costs of suit.

Judgment rendered December 10th, 1869. Signed December 14th, 1869.

(Signed) CHA'S LEAUMONT, *Judge.*

Bill of exceptions for defendants.—Filed December 14th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court.

Be it remembered that, on the trial of this case, the counsel for the defendants offered many and various witnesses to prove that the persons, or some of them named in the second section of act No. 118 of the session acts of the general assembly for the year 1869, relative to the corpora-

tion (so-called) of The Crescent City Live Stock Landing and
63 Slaughter House Company, combined to carry through the general assembly the said act for their emolument, and agreed to provide for and to pay a sufficient number of the members of the said general assembly, to make the majority of the same such sums of money and such a number of the shares of the preferred stock in said company as would secure their votes for the act; and that, in pursuance of said agreement, money and evidences of debt were collected and preferred stocks issued and so expended, and that the votes of a sufficient number of the members of the general assembly were so purchased with money, checks, and preferred stock as to carry the said act through the general assembly; that the parties interested in said act as parties named therein, or as associates of said parties, did offer to give money and preferred stock to members of the general assembly who denounced said act as providing for an enormous and corrupt monopoly, and that, while some some of them refused to be corrupted, there were
64 enough of the members of the general assembly who did accept the bribes, and who voted for the bill, and who were moved to give their votes therefor, by bribes of money and of evidences of debt and of stock in the company, to secure the passage of the said act through said general assembly; that the persons named in said act as corporators of the said Crescent City Live Stock Landing and Slaughter House Company, neither severally nor collectively, were ever in any charge, superintendence, or oversight of the health of the city of New Orleans, nor members of the board of health or city council, nor men of property or settled avocations in the city, nor engaged in the slaughtering of cattle or stock, or concerned in its care or custody, or in any way engaged in the slaughter-house business, but were adventurers, who for the hope of making money did bribe a sufficient number of the members of the general assemhly to pass the said act by gifts of money and preferred stock in said company.

65 To the introduction of which testimony and the examination of which witnesses the counsel for the plaintiff objected on the grounds that the said testimony is impertinent, scandalous, and criminous; that the allegations of the answer under which this testimony is sought to be introduced are general, loose, and of a railing character, without certainty of detail or specification, charging various acts and deeds upon those who are corporators of The Crescent City Live Stock Landing and Slaughter House Company, which cannot be admitted to proof in a court of justice, charging the members of the general assembly who participated in the act of flagrant violation of their public duty, and the whole tenor of which is to scandalize and defame said corporators and associates and the legislative department of the government, and to bring the same and the law into disrepute, derision, and contempt; and that it is an attempt to prove matters which it is un-
66 becoming the dignity of the court to hear; testimony which is not only unnecessary to be shown in the cause, but which cannot lawfully be shown, if true; that the court cannot enquire into the motives and inducements which prevailed upon the members of the legislature to vote for the act No. 118 in question, said general assembly being a co-ordinate branch of the government.

Which objections the court sustained, ruled out the testimony, and refused to have the witnesses sworn and examined; to which ruling the counsel for the defendants excepted, and tender this their bill of exceptions for signature.—"J. P. H.,"

(Signed) CHA'S LEAUMONT, *Judge.*

Motion for appeal.—Filed December 14th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court.

On motion of Fellows and Mills, Campbell, Spofford and Campbell, and Cotton and Levy, of counsel for the defendants, and upon suggesting to the court that there is error in the judgment rendered in this case on the 9th December instant to their prejudice—

67 It is ordered that a suspensive appeal to the supreme court, returnable on the 1st Monday of January, 1870, be allowed said defendants on their giving bond and security in the sum of two hundred dollars, conditioned as the law directs.

Bond of appeal.—Filed December 14th, 1869.

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Know all men by these presents that we, William Fagan et als. and R. H. Noble, are held and firmly bound unto the clerk of the fifth district court, executors, administrators, and assigns, in the sum of two hundred dollars; for the payment whereof we bind ourselves, our heirs,

68 executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bounden W'm Fagan et als. have this day filed a petition of appeal from a final judgment rendered against them in the suit of The State of Louisiana, ex rel. Att'y General, vs. W'm Fagan et als., No. 809, in the fifth district court for the parish of Orleans, on the 9th day of December, 1869:

Now, the condition of the above obligation is such, that the above-bound W'm Fagan et als. shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said R. H. Noble, their surety, shall be liable in their place.

(Signed) FELLOWS & MILLS. [L. S.]
Att'ys for Appellants.

(Signed) R. H. NOBLE. [L. S.]

69 *Bill of exceptions, No. 1, for plaintiff.—Filed December 17th, 1869.*

STATE OF LOUISIANA
vs.
W'M FAGAN ET ALS. } No. 809.

Fifth district court, parish of Orleans.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 9th day of December, 1869, the counsel for defendants

offered the evidence of Peter Gardner et als., to prove that The C. C. L. S. L. and S. H. Company had not complied with the provisions of their act of incorporation, sec. 3; to which the counsel of plaintiffs objected on the grounds following:

First. That such matters could not be set up against said company except by the State; that parties defendant herein had no right to call such facts in question.

Second. That it had been admitted by the State in the pleadings in this case that said company had complied with the conditions of their charter, and that such admission is conclusive as to defendants and everybody else.

70 But the court overruled these objections, and ordered the evidence to be received; when the counsel for plaintiffs excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case.

(Signed) CHA'S LEAUMONT, *Judge.*

Certificate.

STATE OF LOUISIANA,
Fifth District Court for the Parish of Orleans:

I, Philip Power, jr., deputy clerk of the fifth district court for the parish of Orleans, do hereby certify that the foregoing ninety-three pages (93) contain a true and correct transcript of all the proceedings had, testimony and evidence adduced, and all the documents filed upon the trial of the case wherein The State of Louisiana, ex rel. Simeon Belden, Att'y General, is plaintiff, and William Fagan et als. are defendants, the same being numbered No. 809 of the docket of said court.

71 In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this twentieth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States of America.

[SEAL.] (Signed) PHILIP POWER, JR.,
Deputy Clerk, acting in the absence, on account of sickness, of Louis Power, Clerk.

Supreme court of the State of Louisiana.

Extract from docket.

DECEMBER 22ND, 1869.—Filing record from the 5th district court for the parish of Orleans, No. 809; docketing.

Extract from docket.

JANUARY 3RD, 1870.—Called. Fixed for January 17th, 1870.

Agreement of counsel.

Filed January 3rd, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk Supreme Court.

72 INBAU, AYCOCK & Co. *vs.* C. C. L. S. L. & S. H. Co. } No. 2504.

BUTCHERS' BENEVOLENT ASS'ON *vs.* SAME. } No. 2505.

LIVE S. D. & BUTCHERS' ASS'ON *vs.* SAME ET ALS. } No. 2506.

C. C. L. S. L. & S. H. Co. *vs.* ST'B'T B. L. HODGE & OWNERS. } No. 2507.

STATE OF LOUISIANA, EX REL. S. Belden, Att'y Gen., *vs.* W'M FAGAN ET ALS. } No. 2508.

C. C. L. S. L. & S. H. Co. *vs.* BUTCHERS' BENEV'L'T ASS'ON. } No. 2509.

It is agreed that the above six entitled and numbered suits are to be submitted to the court for adjudication upon the briefs filed and arguments made in the case of The State, ex rel. Simeon Belden, Attorney General, vs. W'm Fagan et als., No. 2508 of the docket of this court, and at the same time of the submission of said case.

N. O., 3rd January, 1870.

(Signed) JOSEPH P. HORNOR,
Of Counsel for C. C. L. S. L. & S. H. Co.

" FELLOWS & MILLS,
Attorneys for Inbau, Aycock, and others in above suits.

73 *Extract from docket.*

SUPREME COURT,
January 15th, 1870.

Filing briefs for appellee.

Answer.

Supreme court.

STATE OF LOUISIANA, EX REL. S. BELDEN, Att'y Gen'l, *vs.* W'M FAGAN ET ALS., APPELLANT. } No. 2508.

Filed January 17th, 1870.

(Signed) M. C. HYMAN, *Dep'y Clerk.*

Plaintiff herein, The State of Louisiana, by S. Belden, att'y general, in answer to appeal by defendants, William Fagan et als., says that there

is no error in the judgment of the lower court; that The State of Louisiana, appellee, is entitled to affirmation of judgment in this hon. court; and prays that the judgment of the fifth district court of the parish of Orleans be affirmed, with costs, and for general relief.

(Signed) S. BELDEN,
Attorney General of Louisiana.

74 *Extract from docket.*

SUPREME COURT,
January 17th 1870.

Filing briefs for appellees.

Motion to fix.—Filed January 17th, 1870.

Supreme court of La.

STATE OF LA., EX REL. S. BELDEN, ATT'Y General,
vs.
W'M FAGAN ET ALS. } No. 2508.

On motion of J. B. Cotton, esq're, of counsel for defendants and appellants, and on oral consent thereto of counsel for plaintiff and appellee, present in court—

This case, fixed for trial this day, was ordered by the court to be continued, and fixed for trial for Thursday, 29th instant.

Extract from docket.

SUPREME COURT,
January 27th, 1870.

Filing briefs for appellants.

Extract from the minutes.

SUPREME COURT OF LA.,
Thursday, January 27th, 1870.

75 The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

STATE OF LOUISIANA, EX REL. S. BELDEN, Att'y General,
vs.
WILLIAM FAGAN ET ALS. } No. 2508.

This case was called for trial, and the court having heard argument from Simeon Belden, attorney general of the State of Louisiana, and C. Roselius, esq're, of counsel for plaintiff & appellee, and J. B. Cotton, esq., & J. Q. A. Fellows, esq., of counsel for defendants and appellants, and the usual hour for the adjournment of the court having arrived—

The court ordered the same to be continued to to-morrow, Friday, 28th instant, for resumption of argument.

Extract from the minutes.

SUPREME COURT OF LA.,
Friday, January 28th, 1870.

76 The court was duly opened. Present, their honors Jno. T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

STATE OF LOUISIANA, EX REL. SIMEON Belden, Att'y Gen'l,
vs.
WILLIAM FAGAN ET ALS. } No. 2508.

This case was called for resumption of argument from yesterday, Thursday, 27th instant, and the court having heard argument from Randell Hunt, esq., of counsel for pl'ff and appellee, and J. Q. A. Fellows, esq., and John H. Campbell, esq., of council for defendants and appellants—

Took the same under advisement upon the briefs for both parties, and the papers now on file.

Extract from the minutes.

SUPREME COURT OF LA.,
Monday, April 11th, 1870.

77 The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, W. G. Wyly, William W. Howe, associate justices; absent, Rufus K. Howell, associate justice.

STATE OF LOUISIANA, EX REL. S. BELDEN, Att'y General,
vs.
WILLIAM FAGAN ET ALS. } No. 2508.

On appeal from the 5th district court for the parish of New Orleans.

It is ordered, adjudged, and decreed that the judgment of the district court be affirmed, with costs of appeal.

(Concurring opinions were read by Justices Taliaferro and Howe. Mr. Justice Wylie read a dissenting opinion in this case.)

* * * * * * *

78 *Opinion and decree.—Filed April 11th*, 1870.

STATE OF LOUISIANA, EX REL. S. BELDEN, Att'y Gen'l,
vs.
W'M FAGAN ET ALS. } No. 2508.

Appeal from the 5th district court for the parish of Orleans.

MR. CHIEF JUSTICE LUDELING:

This suit is instituted by the attorney general, in the name of The State of Louisiana, against The Live Stock Dealers and Butchers' Asso-

ciation of New Orleans, to prevent the said pretended corporation from doing any of the acts, or executing any of the purposes, for which said corporation was organized, because the said acts and purposes are prohibited by the statute of the State of Louisiana, entitled "An act to protect the health of the city of New Orleans, to locate the stock-landing and slaughter-houses, and to incorporate The Crescent City Live Stock Landing and Slaughter House Company," approved on the 8th of March, 1869. The defendants filed the exception of lis pendens.

79 The plea was correctly overruled. The objects of the suits were not the same.

In their answer the defendants deny the right of the attorney general to bring this suit; and they allege that the act of the general assembly, No. 118 of 1869, is unconstitutional.

It is admitted that, for the purpose of erecting slaughter-houses and establishing stock-landings, etc., the defendants have leased, with the intention of ultimately purchasing, of Charles Cavaroc a tract of land, situated within the territorial limits in which the act No. 118 prohibits every one except The Crescent City Live Stock Landing and Slaughter-House Company from erecting slaughter-houses, and establishing stock-landings, etc.

Article second of the act of incorporation, under which the defendants claim to act, declares that the object or purpose of the organization of the company is to do what the act No. 118 forbids.

The State has the right to restrain, by injunction, persons (who have joined themselves together for the avowed purpose of doing what

80 is prohibited by law) from carrying into effect their unlawful purposes, and from interfering with her agents in the execution of the legislative will.

And the attorney general is expressly directed to institute proceedings to prevent persons from unlawfully acting as a corporation, by the first section of an act entitled "An act providing a remedy against usurpation, intrusion into, or the unlawful holding or exercising a public office, or franchise in this State." (Sec. 1 of act No. 58 of 1868, p. 71.)

We are of opinion that the evidence offered to prove "deception, fraud, bribery, corruption," etc., against the members of the general assembly was correctly rejected by the district judge. The allegations were too vague and indefinite to admit of proof. (See Roaks vs. Williams, 13 An., 374; 12 An., 13; Louaillier vs. Castille, 14 An., 777; 9 An., 54; 7 An., 239, Landry vs. Dickson.)

The constitutionality of the act of 8th March, 1869, No. 118, is involved in the cases numbered 2504, 2505, 2506, 2507, 2508, & 2509,

81 submitted to us; and as they collectively present for decision all the objections urged against the validity of the act in upwards of two hundred cases now pending in the district courts of the parish of Orleans, and as there is a written consent to that effect, we will proceed to pass upon the questions presented in the several records as if they were in one case.

The act No. 118 is said to be unconstitutional for the following reasons:

1. Because it is "an act for the emolument of private individuals," and "that certain persons, supposed to be combining and conspiring together for the purpose of unlawful gain, and with the specious, but false pretence of protecting the health of the city of New Orleans, did, by deception, fraud, bribery, corruption, and unlawful means, procure the passage of an act through the legislature of the State of Louisiana,"

entitled "An act for the protection of the health of the city of New Orleans," etc.

It is unnecessary to decide whether a private statute of the general assembly may be impeached for fraud in the grantees, for we are
82 of opinion that the act No. 118 is not a private act.

"There is a material difference between public and private statutes, and the books abound with cases explaining this distinction in its application to particular statutes. It is sometimes difficult to draw the line between a public and private act. Generally speaking, statutes are public; and a private statute may rather be considered as an exception to a general rule. It operates upon particular individuals, or upon private persons. It is said not to bind or include strangers in interest to its provisions, and they are not bound to take notice of a private act even though there be no general saving clause of the rights of third persons. This is a safe and just rule of construction; and it was adopted by the English courts in very early times, and does great credit to their liberality and spirit of justice."

It is supported by the opinion of Sir Mathew Hale, in Luey vs. Livingston, 1 Kent, p. 459: "Private statutes are placed under
83 another limitation. The courts of justice are bound ex officio to take notice of public acts without their being pleaded, for they are part of the general law of the land, which all persons, and particularly judges, are presumed to know; but they are not bound to take notice of private acts, unless they be specially pleaded and shown in proof by the party claiming the effect of them." (1 Kent, p. 460.) The act No. 118 was passed in the interest of the public, its provisions are general and are binding upon all persons, and, therefore, it is a public statute.

And we are of opinion that courts are without warrant in law to go behind an enrolled and duly authenticated and promulgated public statute to inquire into the motives which may have influenced or actuated the members of the general assembly in enacting laws. Otherwise, the legislative department would cease to be a co-ordinate branch of the government. It would be completely subordinate to the judicial department. (Fletcher vs. Peck, 6 Cranch, 87; 8 Indianna Rep., 298, Wright vs. Defrees; 7 Am. Law Rep., 158, Kinbury & Erie R. R. Co. vs. Cooper.)

84 2nd. The bill was signed after the legislature had adjourned.

Does the constitution prohibit this? Article 66 provides that "every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; if he do not, he shall return it, with his objections, to the house in which it originated. If the bill shall not be returned by the governor within five days after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case the bill shall be returned on the first day of the meeting of the general assembly after the expiration of said five days, or be a law."

The governor shall sign the bill, if he approve; if he do not, he shall return it to the branch of the legislature in which it originated. It is only when he disapprove that he is required to return the bill to the legislature. When the general assembly is in session he is allowed five days, in which to determine whether he will sign the bill or veto
85 it. If the general assembly adjourn before the expiration of the five days, he is then allowed until the first day of the next general assembly in which to decide whether he will veto or approve the bill.

We have already seen that article 66 directs that if the governor approve he shall sign the bill. We cannot believe that this delay was given to the governor simply to enable him to examine the law for the purpose of disapproving; on the contrary, we believe that the time was granted for the same purposes for which the five days were allowed him during the session of the legislature—that is, to judge and determine whether he will sign the bill or veto it.

The constitution of California contains this clause: "If a bill shall not be returned by the governor within ten days, Sundays excepted, the same shall be a law in like manner as if he had signed it, unless the legislature, by adjournment, prevent such return." And it is contended
86 that the article in the constitution of California (& New York also) is more favorable to the exercise of the right of the governor to sign a bill after the adjournment of the legislature than art. 66 in our own constitution. We do not concur in that view. Those constitutions do not in terms, expressly or impliedly, confer the right to sign a bill after the adjournment of the legislature; and in the 21 New York Rep. the court held that the governor could sign bills after the adjournment of the legislature, because the constitution did not, expressly or impliedly, prohibit such an act.

The court in California decided that the governor could not legally sign a bill after the adjournment of the legislature. We are inclined to the opinion that the New York decision is based upon sound principles and logical reasoning.

But under the constitution of Louisiana the right may be exercised not only because it is not prohibited, but because the right is delegated in the constitution itself, as we have already stated.

But it is contended that the signing of bills by the governor is
87 a legislative act, and is "positively prohibited in article 39 of the constitution, after the expiration of sixty days." The article declares: "The members of the general assembly shall receive from the public treasury a compensation, &c., * *. No session shall extend beyond the period of sixty days, to date from its commencement; and any legislative action had after the expiration of said period of sixty days shall be null and void; but the first general assembly that shall convene after the adoption of this constitution may continue in session for one hundred and twenty days."

It is evident that the terms "legislative action," used in this article, refer to the action of the general assembly; but if there were any doubt about this, article sixty-six of the constitution would explain the ambiguity; for it is expressly declared that the governor shall, in a certain contingency, return the bill, with his objections, to the house in which it originated on the first day of the next general assembly.

It is as much a "legislative action" to disapprove a bill and as-
88 sign reasons therefor as to sign it.

A considerable portion of the elaborate brief of the counsel for defendants is devoted to combatting the correctness of the views of this court relating to the powers of State legislatures. After a careful examination of the question, we see no good reason for changing the opinion expressed by us in the case of The State vs. Volkman: "That the legislature, in its sphere, is supreme in all respects, save when restricted by the constitution of the State or the United States," and which was often enunciated by our predecessors. (9 R., 411; 9 An., 562; 11 An., 308, 338, 370; 12 An., 169, 554.)

The accepted theory seems to be this: In every sovereign State there resides an absolute and uncontrolled power of legislation. In Great

Britain this complete power rests in the Parliament; in the American States it resides in the people themselves as an organized body politic. But the people, by creating the Constitution of the United States, have delegated this power, as to certain subjects and under certain re-
89 strictions to the Congress of the United States; and that portion they cannot resume, except as it may be done through amendment of the national Constitution.

For the exercise of legislative power, subject to this limitation, they create, by their State constitution, a legislative department, upon which they confer it; and granting it in general terms, they must be understood to grant the whole legislative power which they possessed, except so far as at the same time they saw fit to impose restrictions, (Cooley's Constitutional Limitations, p. 87.) Mr. Chancellor Kent said: "The principle in the English government, that the Parliament is omnipotent, does not prevail in the United States; though if there is no constitutional objection to a statute, it is with us as absolute and uncontrollable as laws flowing from the sovereign power under any other form of government." (1 Kent, p. 448; 16 Georgia Rep't, p. 113.)

We believe the rule stare decisis should control us in questions of this kind. "Misera est servitus ubi jus est vagum aut incertum."

90 III. IV. The objection that the works were not completed within the time specified in the law, and that the charter of The Crescent City Live Stock & Slaughter House Company was forfeited by the failure, cannot be urged by the defendants. The State alone had the right to have the charter forfeited. In the petition of the State, it is admitted that the works were completed; and we think the evidence in the record justified the admission.

V. It is urged that the act is violative of the bill of rights incorporated in the constitution of this State in 1868, and the fourteenth constitutional amendment of the United States, because it deprives "one class of citizens of certain rights of property and freedom of action, not for the good of the community, but for the private gain of other individuals in the community."

This proposition assumes that one class of persons is deprived of certain rights of property for the private gain of individuals.

91 This assumption is unwarranted by the record and contemporaneous history. The facts which necessitated the passage of the act No. 118, or some similar law, were succinctly stated in the oral argument of the distinguished counsel who closed the discussion: "When this city was under the government of the Cabildo; and afterwards, under the government of the charter of 1804, the population was comparatively small, only a few thousand inhabitants. Yet they found it necessary to regulate the slaughtering of animals whose meat was intended to be sold in the market of the city, and a place was assigned for the purpose at or below the point where the slaughter-house is established at this time by the act of the legislature. * * * Things continued under this regulation for a long time; but our population increased, and, as the Americans came in, more vigor was exhibited in the government of the State and city. * * The population at
92 first chiefly settled and concentrated in what is now the lower part of the city. * * *

"The butchers, who had been carrying on their business quite conveniently from the opposite side of the river, below the city, began to find the situation inconvenient. * * They determined to move to the upper part of the city, and to slaughter there the animals whose meat they sold; and this they did to the annoyance and injury of the public.

After the lapse of some time a series of municipal ordinances was passed upon this subject. They were entitled 'Ordinances for the protection of the health of the city, and to guard against public nuisances.' They provided that *that* no beef should be slaughtered except in slaughter-houses, and that the head and entrails, the offals and other refuse parts, of the animals should be taken away and thrown into the river at a point below the city. * * Population and business continued to in-
93 crease and move upwards, and the butchers again found it convenient and advantageous to move up. They went, as the enactments show, to the city of Jefferson, where they have landed their cattle on the banks of the river, put and kept up pens, slaughtered animals, throwing the offals, etc., into the river, and established and kept up a constant source of nuisance and annoyance to the community, injurious and dangerous to the health, the limbs, and lives of the citizens. * * Two or three hundred beeves, arriving almost daily, for the purpose of being slaughtered for the New Orleans market, were landed at the foot of Louisiana avenue. Persons passing along the levee and the streets adjoining the landing, in a densly populated part of the town, watching, invariably, with fear or anxiety, were continually inconvenienced by these untamed animals, sometimes breaking loose and rushing wildly and madly through the streets, endangering the limbs and the lives of men, women, and children."

94 Grand juries reported against this state of things as a public nuisance, and called upon the municipal council of New Orleans to exercise its police powers and correct the evil; and the council did pass ordinances for that purpose.

In 1866 the grand jury of this city presented to the district court this important subject. They stated that, "in consideration of the prevalence of cholera and other diseases in our midst, the grand jury makes a special report upon the impurity of the water taken from the river and supplied by pipes to the city, caused by throwing offal, refuse from slaughter-houses, etc., into the river, above the water-works company at the foot of Richard street. The superintendant of the water-works states that the suction pipes of the river occasionally becomes clogged by such matter being drawn into them, requiring constant attention to keep their orifices clear. Two large vessels lie at the wharves immediately above and in front of the suction pipes, and act as
95 fenders to guide the floating offal, etc., out into the current. When they have been loaded and gone, the collection of effete matters will naturally increase, as in an eddy. How many slaughter-houses exist above the works I cannot say, but their entire removal to the lower part of the city would be a public benefit. A petition signed by more than five hundred of our most prominent citizens for such removal of slaughter-houses was addressed to the council last spring, and reported upon favorably by the committee on police & health of the lower board, June 12th, 1866; but the resolution submitted by them failed to become a law; and the city passed, in the 31st of July, 1866, an ordinance, No. 233, N. S., authorizing the erection of slaughter-houses in the fourth district, although, under the health ordinance, (sec. 26,) they are expressly forbidden. Every diligence is exercised now to keep the suction pipes clear from all effete substances; and, after the water is pumped into the reservoir, a laborer is engaged through-
96 out the day in skimming the scum which forms upon the surface. * * * * Many persons of this city (especially the poo er classes, amongst whom most of the deaths of cholera have lately taken place) use the hydrant water for drinking and other purposes. * * *

We recommend that the city authorities should take this matter into immediate consideration; and that, besides adopting requisite ordinances, they should petition the legislature to pass an act that there should not be allowed to exist any slaughter-houses or similar places above the city within a specified number of miles. We consider such an act of legislation necessary, because, should the city authorities cause the removal of such establishment from the upper portion of the city, they could be re-established barely above the city limits, and would be as great nuisances then as now."

In the year 1867 the State legislature passed an act entitled "An act to prevent offals and nuisances from being thrown in the Mis-
97 sissippi River within the limits of the cities of New Orleans and Jefferson." And to enforce obedience to this command, the act declared that no ordinance of either council should have force until that ordered by this act should be passed; but this law was disregarded.

Again, from the journal of the house of representatives of 1868, it appears that the following bill was brought in: "An act to protect the health of the city of New Orleans and of the town of Algiers," etc. It was read and referred to a committee, who reported, "from personal and careful observation, from the opinions of persons thoroughly competent to judge on the question," as well as "from a petition signed by eleven hundred respectable property-holders of New Orleans, urging the removal of this foul nuisance," that "the immense quantity of filth and offal which is accumulated at and in the vicinity of the stock-landing goes into the Mississippi River, which, if not prejudicial to health, is certainly very revolting. The immense suction pipe
98 of the New Orleans water-works is immediately below, and sucks in objects floating on the water at a distance of fifty or sixty feet. When the river is low, it is not uncommon to see intestines and portions of putrified animal matter lodged immediately around the pipes. The liquid portion of this putrified matter is sucked into the reservoir. Vessels arriving here with cattle, especially those that have been in a storm, invariably throw the dead cattle, of which they often have many, into the river at the stock-landing. These are again taken from the river and subjected to the process of skinning, after which the carcass is again thrown into the river. It is not unusual during the sultry heat of summer months to see these floating objects about the shipping, no doubt causing disease among the sailors on board these vessels. There is not the slightest doubt in the minds of your committee that this must be extremely prejudicial to the health of New Orleans." To
99 this report is appended a certificate from the president of the board of health, J. S. Smith, Dr. Choppin, & J. T. Pennington, corroborating the conclusions of the committee, and recommending the removal of the stock yards, landings, sale stables, and slaughter-houses below the city. With these historical facts before us, we are not at liberty to presume that the general assembly were guilty of falsehood and deceipt when they declared, in the title to the act in question, that the object of the law was "to protect the health of the city of New Orleans," etc. It cannot be seriously questioned that the general assembly possessed the power to legislate upon the subject. It comes clearly within the police powers of a State. We have seen that, in the opinion of grand juries, of private citizens, and of legislatures, the location of the stock-landing and slaughter-houses in the city was injurious to the health, comfort, and safety of the inhabitants, and demanded legislative action.

Does the act of 1869 cease to be a police regulation because

it locates the stock-landing and slaughter-houses elsewhere, and creates a corporation as a means to carry out the legislative will? We think not. The members of the general assembly were the sole judges as to the instruments by which they should enforce their police regulations. "What the State can do itself, it can do through a corporation." (11 An., 371.)

To protect the health of the city of New Orleans, the legislature provided that from and after the first day of June, 1869, it shall not be lawful to land, keep, or slaughter any cattle beeves, calves, sheep, swine, or other animals, or to have, keep, or establish any stock-landing, yards, pens, or slaughter-houses at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, & St. Bernard, or at any point or place on the east bank of the Mississippi River, within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi River, above the present depot of the New Orleans, Opelousas, and Great Western Railroad Company, except that The Crescent City Live Stock Landing and Slaughter House Company may establish themselves at any point or place hereinafter provided. The corporation is then created with certain privileges and obligations. The company is required to build, at its own expense, a grand slaughter-house or abattoir of sufficient capacity to accommodate all butchers, and in which to slaughter five hundred animals per day; also a sufficient number of sheds and stables to accommodate all the stock received at this port; all of which was to be completed by the first of June, 1869. They were also authorized to build landing-places for stock, etc.

Having prohibited the slaughtering of animals and the landing of stock within the limits where such business had been conducted, it was eminently proper that the general assembly should provide places, with suitable conveniences, for the butchers and dealers in live stock to carry on their business without interruption.

This the legislature did through the agency of a corporation.

The statute in question requires the governor to appoint a competent person as inspector, whose duty it is to examine all animals intended to be slaughtered, to ascertain if they be sound and fit for human food. It seems to us that the establishment of one grand abattoir would greatly facilitate the inspect of animals, and the attainment of the objects contemplated by the law. It is not an unreasonable presumption that the general assembly exercised their power wisely. At all events, it was the exercise of a discretion vested in them, and we, as judges, cannot arrogate to ourselves the right to correct their errors in matters within their control.

"The police powers affect the use and enjoyment of property. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or prescribe limits to its exercice. It extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state, etc. By this general police power of the state, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state; and of the perfect right of the state to do which no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned." (2 Kent, p. 432.)

We are gravely told that this act infringes the liberty of the citizen, and the freedom of the use of property; and that, therefore, it is a violation of the bill of rights in the constitution of the State of Louisiana,

as well as of the fourteenth amendment of the Constitution of the United States.

We think that is a fallacy. Liberty is the right to do what the law permits. "Freedom does not preclude the idea of subjection." On the contrary, it presupposes the existence of some legislative pro-
104 vision, the observance of which insures freedom to one by securing the like observance from others. But the act of 8th March, 1869, does not prevent butchers from following their trade; every one who wishes may butcher, subject only to the regulations of the law. There is nothing unconstitutional in that. In the case of Morano vs. Mayor et als, 2 La., p. 218, the district court charged the jury that the city had the right to prevent the sale of sound oysters by individuals on their private property. To this opinion the plaintiff took a bill of exceptions. Judge Martin, who was the organ of the court, said: "It appears to us the district court did not err. The city council has the power to establish markets, and to provide for the cleanliness and salubrity of the city. In establishing markets, they designate certain spots or places for the sale of certain articles of provisions; in doing so * * * they facilitate the inspection of provisions; and by hiring the stalls they raise money to defray the expenses of building market-houses, and pay the salaries of officers
105 they appoint to prevent the sale of unsound provisions. * * * * It appears they have established several stands on the levee for the sale of oysters, and they farm out these stands. The ordinance prevents the keeping of heaps of oysters elsewhere than in these stands. In this case the salubrity of the city seems to have been considered by the council."

But it is said that The Crescent City Live Stock Landing and Slaughter House Company alone can keep a slaughter-house within the limits designated. That is true.

But "there are unquestionably cases in which the State may grant to specified individuals privileges without violating any constitutional principle, because, from the very nature of the case, it is impossible that they be possessed and enjoyed by all; and, if it be important that they should exist, the proper State authority must be left to select the grantees." Cooley's Constitutional Limitations.

This right has often been recognized by this court. (15 La., p.
106 413, New Orleans & Ponchartrain Co. vs. Orleans Navigation Co.; 10 An., p. 741; 11 An., 256; 3 An., 639; 9 R., 411.)

V. It is contended that the act is unconstitutional because it prescribes that cattle, horses, etc., shall be landed at a particular part of the bank of the Mississippi River, and that the owners shall pay for the facilities afforded them in the wharves erected there; and that the act of Congress of the 8th of April, 1812, by which the Mississippi River, etc., is declared to be a common highway, free from imposts, tolls, etc., and article 446 of our Civil Code, conferred the right on every one to land and unload his vessels on its banks without charge.

This question is not a new one. It has been repeatedly decided both by this court and by the Supreme Court of the United States adversely to the views of the defendants. In Gibbon vs. Ogden, (9 Wheaton, p. 1,) Chief Justice Marshall said: "The inspection law, quarantine laws, health laws of every description, laws for regulating the internal
107 commerce of a State, and those which respect turnpike roads, ferries, &c., are not in the exercise of a power to regulate commerce, within the language of the Constitution."

In the case of the Owners of Brig James Gray vs. Owners of Ship

John Fraser et als., Chief Justice Taney said: "The local authorities have a right to prescribe at what wharf a vessel may lie, and how long she may remain there; where she may unload or take on board particular cargoes; where she may anchor in the harbor, and for what time; and what description of light she shall display at night to warn the passing vessels of her position, and that she is at anchor and not under sail. * * * * * * * * *

"And there is nothing in the regulations referred to in the port of Charleston which is in conflict with any law of Congress regulating commerce, or with the general admiralty jurisdiction conferred on the courts of the United States." (21 Howard, p. 187; 11 Peters, 143;
108 Worsley et als. vs. The Second Municipality of New Orleans, 9 Rob., 332; 11 M., 323.)

After an earnest and careful examination of all the objections urged against the validity of the act of the general assembly passed in 1869, and numbered 118, we have come to the conclusion that the law is not obnoxious to any constitutional objection. We need hardly add that acts of the general assembly are not only presumed to be constitutional, but that the authority of courts to declare them void will never be resorted to except in a clear and urgent case, one which requires no nice critical acumen to decide on its character, but which is obvious to the comprehension of any person. (21 An., p. 694; 6 Cranch, 126, Fletcher vs. Peck, 12 Wheat., 270, Ogden vs. Saunders.)

It is therefore ordered, adjudged, and decreed that the judgment of the district court be affirmed, with costs of appeal.

I concur in the decree pronounced in this case.
(Signed) W. W. HOWE,
Associate Justice.

109 Mr. JUSTICE TALIAFERRO concurring:

There is no express provision of the constitution, national or State, prohibiting the legislature from conferring exclusive privileges upon a corporation. The inhibition is sought for in the bill of rights introduced into the constitution of Louisiana. In title one, article two, of the constitution of 1868, it is declared that the citizens of this State "shall enjoy the same civil, political, and public rights and privileges, and be subject to the same pains and penalties." As an abstract general proposition, this is true; but in contemplating this proposition, we should not lose sight of the fundamental principle forming the basis upon which constitutions themselves rest. This controlling principle, when brought into action, often modifies and limits the proposition which asserts a constant, unlimited, and perfect equality of rights and privileges. What is this paramount principle? It is, that the will of the people is the source, and the happiness of the people, the object,
110 of all legitimate government. As a corollary, it follows that the general welfare should be provided for even by the sacrifice of that of an individual, if circumstances require it. Each individual, on entering into a society to be governed by laws, yields a part of his natural liberty to secure the remainder, and consents to postpone his own rights when they become antagonistic to those of the great body of the community to which he belongs. The law of expropriation is an example of the working of this principle. The partition of the shore of the Mississippi River in front of New Orleans, and the appropriation of each portion to a distinct class of vessels and water crafts is an infringement of that part of our State constitution just referred to, and of the recogni-

tion in article 446 of the civil code, of the right of every one freely to land his vessel anywhere on the shores of the river. The abstract equal right of the steamboatman or raftsman to land his steamboat or raft within the district assigned to steamships is violated by the
111 monopoly given of that portion of the shore to owners and navigators of steamships. The sacrifice of the individual right in this case is of no consequence in view of the general benefit and commerce of a great commercial community. Yet it is an infringement of that abstract equal right declared in our State constitution.

The doctrine, then, is elementary and well established, that in the public interest and for the public good legislation which postpones the interests of a few to that of a whole community is legitimate and proper. The law under consideration, known as the slaughter-house act, I concider a public statute, and enacted for the public weal. It relates to an object of the very highest importance, the health of the people. It prescribes sanitary regulations which the legislature thought proper to adopt. With the policy or impolicy of these regulations the judicial department has nothing to do. It will not consider the propriety or expediency of the measures resorted to by the law-maker. If, in
112 the adoption of means deemed appropriate for carrying out the objects of the law, it was thought advisable to incorporate a company with certain privileges, & the privileges thus conferred affect adversely the interests of a few, that is no ground for declaring the law unconstitutional and void.

Mr. JUSTICE WYLY, dissenting:

I cannot concur in the opinion of the majority of the court on the question of monopoly presented in these cases.

Under the previous constitutions of this State an act could have but one object, and that had to be embraced in its title; but under the constitution of 1868, organizing the legislature which adopted the act of the 8th March, 1869, (act No. 118,) now under consideration, a statute may embrace distinct or different laws, provided only that the objects thereof be contained in the title. In other words, legislation on different subjects may be embraced in one act, provided the title contains
113 its several objects. The act before us, entitled "An act to protect the health of the city of New Orleans, to locate slaughter-houses, and to incorporate The Crescent City Live Stock Landing and Slaughter House Company," in my opinion, contains both a public law and a private statute; a public law, in so far as it seeks to protect the health of the city of New Orleans, by requiring the landing and slaughtering of animals below the city, and prohibiting it above; a private statute, in that it incorporates the "Crescent City Live Stock Landing and Slaughter House Company," and gives to it certain sole and exclusive rights and privileges for a certain period. As to the former object, the act is an exercise of the police power, and that far a public law; as to the latter, it is merely a contract between the State and the judicial person it creates, the "Crescent City Live Stock Landing and Slaughter House Company." My objection is to that part of the act which is clearly a private statute, wherein a monopoly is given, not necessary to the public
114 health, abridging the freedom of trade and labor for the gain of a private corporation.

While the legislature had the right to change the place of landing and slaughtering of animals from the place where it has heretofore been conducted to a locality elsewhere, not deleterious to the public health & safety; while for sanitary reasons it had the right to compell the

butchers to abandon the locality where their slaughter-houses are situated, and to conduct their occupations at another locality less deleterious, imposing this limitation upon their natural rights for the public good, justifiable only by the necessity, it had not the right to create this monopoly in favor of The Slaughter House Company, giving to it for twenty-five years the sole and exclusive right and privilege to keep stock-landings and slaughter-houses in the parishes of Orleans, St. Bernard, and Jefferson, embracing at least half the population of the State. It had no right to place unnecessary restrictions upon labor, to compel the numerous persons pursuing the occupation of butchers to re-
115 pair to the premises of The Slaughter House Company, and there pay tribute to it for the privilege of pursuing their usual occupation or earning their living.

As the public health required another location for the purpose of slaughtering animals for market, the act to that extent was law; but where it creates the monopoly, where it imposes upon labor a restriction not necessary, where it compels a large class of the citizens to pursue their occupation only in the premises of The Slaughter House Company, and to pay to it a contribution, it is, in my opinion, a measure not necessary to protect the public health of the city of New Orleans. It is not a legtimate exercise of police power, and it is a flagrant violation of the bill of rights contained in the constitution.

If the butchers had built their slaughter-houses below the city instead of above it, and were there pursuing their occupation,
116 there would have been no necessity for the act, at least for sanitary reason; there would have been no necessity to make the application of police power or to place the limitation upon the occupation of these citizens. Now, if the public health requires these slaughter-houses to be below the city instead of above it, a law to accomplish only this object would be a legitimate exercise of police power. Whatever legislation is necessary for the public health must be endured by these citizens, however detrimental to their individual interests; but legislation beyond this legitimate purpose, imposing restrictions upon their occupations in favor of a private corporation, violate their civil rights, their liberty, their property, and their pursuit of happiness, to secure which the government was instituted.

The slaughtering of animals and preparing the meat thereof for market is an ancient occupation in this commonwealth, many citizens
117 earning their living by pursuing this art or business. It is a lawful business, and one which cannot be restrained except so far as public safety, health, or necessity may require. The inherent right of the citizen to this occupation, as to all others that are lawful, can only be infringed upon or restricted in so far as public necessity may demand, and no further. Under the bill of rights incorporated in our constitution, all men are free and equal: "they shall enjoy the same civil, political, and public rights and privileges, and be subject to the same pains and penalties." Under this private statute the judicial person created by it is endowed with greater rights and privileges than other persons in the pursuit of this ancient occupation, and is not subject to the same restrictions, "pains, and penalties" as are imposed upon other persons pursuing the business of butchers.

If it does not endanger the public health for The Slaughter House Company to carry on the business of butchers in the localities
118 prescribed in the act, how would it endanger the public health for other persons in the same localities to pursue independently

the same avocation? Can we say the private statute before us does not violate the bill of rights in the constitution, where it gives to a judicial person created by it greater rights and privileges in the pursuit of an ancient occupation than it does to other persons, and where, under "pains and penalties," it prohibits a large class of persons within the limits of three parishes, embracing half the population of the State, from the slaughtering of animals, which is their occupation, unless they do so at the slaughter-house of this private corporation, and pay to it a contribution for each animal they may slaughter? Can we say there is equality before the law where the many are forced to serve the few, where labor is forced to pay tribute to this gigantic monopoly?

But it is said that, as the legislature had the right for sanitary
119 reasons to confine the business of slaughtering animals to certain limits, or inasmuch as they can protect the public health by the exercise of police power, they are the sole judges of the means to accomplish the object; they are the sole judges of the legitimate exercise of their police power.

As a means of public health, they can undoubtedly prohibit the exercise of a lawful occupation in certain localities and designate others in which it may be pursued; but, under the pretext of accomplishing an object coming under the exercise of police power, they cannot accomplish another object not coming strictly under that power, infringing upon the rights of the people guaranteed by the constitution.

They cannot accomplish an unconstitutional purpose; they cannot give validity to an unconstitutional private statute by embracing it in an act containing a legitimate object and a valid public law. An unconstitutional law is the same whether it stands alone in a separate
120 act, or whether it is embraced in the same statute with another law which is valid and constitutional.

In the statute before us I see two separate and distinct objects, & two separate and distinct enactments; one which is right and constitutional and one which is wrong and unconstitutional.

The creation of this monopoly is in no manner necessary to promote the public health. That object would be accomplished without it just as well as with it. All the public health required was that the slaughtering and landing of animals should be prohibited above the city and permitted below it. The moment the business was prohibited above and a locality designated below, public necessity ceased to have further demands in the premises. The right to impose this monopoly cannot be successfully maintained upon sanitary grounds, for it was not a measure necessary to protect the public health. But it is said as to police
121 power, whether exercised right or wrong, the legislature alone can decide; that the courts cannot interfere with them in the application of that power.

To my mind the police power, like all other powers confided to the legislature, is not unlimited; that may be abused as other powers are sometimes abused. The legislature can no more be the sole and exclusive judge of the extent of its police power than it can be of the extent of the other powers of legislation delegated to it by the people, in whom the sovereignty is invested. If the legislators were the sole and exclusive judges of the extent of their powers, their will would be omnipotent, there being no difference between the possession of all power, and being the sole and exclusive judge of the amount of power one believes himself entitled to exercise.

The judicial department was intended to protect the constitutional

rights of the people, whether assailed by an enactment springing
122 from the wrongful exercise of the police power or any other power. If the constitution has been violated, as I think, in creating this monopoly, to that extent the act before us is not law, and it is not only the right but the duty of the court so to declare.

The citizen has no greater property than the freedom of trade and labor. It cannot be taken for private purposes, but only under public necessities and for public uses.

"The legislature has not, by the right of eminent , the right to take the property of a person to give to another, not even in police regulations." (3 Paige Chan. N. Y. Rep., 159; 8 Wendell, 85.)

"The legislature is not the sovereignty of the State, but only one of the organs of the sovereignty, and a restricted organ in regard to all matters prescribed by the constitution. It is prohibited to the govern-
123 ment, even in its sovereign capacity, to take private property except for public use; * * * but, happily for us, the legislature is not the creator or the judge of its own powers, but it is the creature of the constitution, and all its acts must be submitted to it." (18 Wendell N. Y., 56, 61, 63.)

I think the vast array of authorities, both English and American, presented with such consummate ability by the counsel in behalf of The Butchers' Benevolent Association, fully maintains the view I have taken of the subject of monopoly presented in these cases, and I therefore feel constrained to dissent from the opinion of the majority of the court.

Petition for rehearing.

Supreme court of La.

STATE OF LA., EX REL. S. BELDEN, ATT'Y GEN'L,
vs.
WILLIAM FAGAN ET ALS. } No. 2508.

124 Petition for rehearing, filed April 26th 1870.
(Signed) M. P. JULIAN,
Dep'y Clk.

The petition of the respondents and appellants herein, with respect, show—

That they are informed that there is error to their prejudice in the judgment and decree rendered by this court herein, and they pray for a rehearing of this case, & the setting aside of the judgment, and, after argument, a reversal of the judgment of the district court, on the grounds and for the reasons contained in the printed argument filed herewith, and for general relief.

(Signed) FELLOWS & MILLS,
CAMPBELL, SPOFFORD AND CAMPBELL,
COTTON & LEVY,
E. BERMUDEZ, *Counsel for Respondents.*

Extract from docket.

April 26th, 1870.

Filing briefs on rehearing.

Extract from the minutes.

SUPREME COURT,
Monday, May 9th, 1870.

125 The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, William W. Howe, associate justices; absent, W. G. Wyly, associate justice.

STATE OF LOUISIANA, EX REL. S. BELDEN, ATT'Y General,
vs.
WILLIAM FAGAN ET ALS. } No. 2508.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

Supreme court of La.

THE STATE OF LA., EX REL. S. BELDEN, ATT'Y Gen'l,
vs.
W'M FAGAN ET ALS. } No. 2508.

THE UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

To the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States:

126 The petition of Paul Esteben, Lewis Rush, Jean P. Rouede, William Maylie, Solomon Firmberg, Barthelemi Beaubay, William Fagan, Joseph Daniel Brodrick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers and Butchers' Association of New Orleans, and Charles Cavaroc, defendants, in a cause wherein The State of Louisiana, upon the relation of Simon Belden, the attorney general of said State, is plaintiff, and they, with the corporation known as The Live Stock Dealers and Butchers' Association of New Orleans, herein also appearing as petitioners, are defendants, respectfully represents to your honor—

That they are aggrieved by a final judgment in the supreme court of the State of Louisiana, bearing date the 9th day of May instant, and that they exhibit to your honor a copy of the record of the cause, with the opinions & decree therein, annexed to this petition as Exhibit A.

127 That it appears on the face of the said record that your petitioners claimed a right, privilege, and title under the Constitution of the United States, and specially under the fourteenth amendment thereof, to labor in their vocation of butchers, and to carry on the trade of the live-stock landing & slaughter-house business on equal terms with other citizens of the United States, whereever and wheresoever the said business was allowed under the laws of the State or the United States.

But that against common right, and the rights of the defendants, the legislature of Louisiana did grant to seventeen persons, incorporated as The Crescent City Live Stock Landing and Slaughter House Company, the sole and exclusive privilege of conducting the live-stock landing and slaughter-house business within the limits and privileges of said act, and

did make it unlawful for any person or persons to land, keep, or
128 slaughter cattle, beeves, sheep, swine, or other animals, or to have any stock-landing, yards, pens, slaughter-houses, or abattoirs at any point or place within the parishes of Orleans, Jefferson, or St. Bernard, or within the chartered limits of the city of New Orleans, other than the said corporation, and made it unlawful for any person or persons to conduct or to carry on said business, and did require that all places for carrying on said business should be no other than those of said company, and did require that all animals designed for sale or slaughter in said parishes should be landed at the wharves, and sheltered and kept at the houses and yards of said corporation, and fixed a tariff of burdensome charges therefor, contrary to common right and the Constitution of the United States, as aforesaid.

And your petitioners aver that they set up in the said cause their constitutional rights, title, and privilege, but that the said court
129 overruled and determined adversely to the same, thereby establishing and maintaining an odious, oppressive, and mischievous monopoly, against common right and the law of the Constitution.

Wherefore they respectfully pray of your honor to allow a writ of error to the Supreme Court of the United States, to sign a citation to the plaintiff in the cause, and to approve the bond herewith submitted, and for such further order as to justice and right may in the premises appertain.

(Signed) FELLOWS & MILLS.
" COTTON & LEVY.

Order for writ of error.

Writ of error allowed May 13th, 1870.
(Signed) JOS. P. BRADLEY,
Asso. Just. Supreme Court U. S.

Filed May 16th, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court State of Louisiana.

130 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you between The State of Louisiana, ex relatione S. Belden, Attorney General, plaintiff, and Paul Esteben, Louis Ruch, Jean P. Rouede, William Maylie, Solomon Fimberg, Bartheléme Beaubay, William Fagan, Joseph Daniel Broderick, Nicholas Seibel, Martin Lannes, Joseph Getzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers & Butchers' Association of New Orleans, & Charles Cavaroc, defendants, a manifest error hath happened, to the great damage of the said Paul Esteben, Louis Ruch, Jean P. Rouede, William Maylie, Solomon Fimberg, Bartheleme Beaubay, William Fagan, Joseph Dan'l Broderick, Nicholas Seibel, Martin Lannes, Joseph Getzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers & Butchers' Association of New Orleans, & Charles Cavaroc, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if

judgment be therein given, that then, under your seal, distinctly and openly. you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirteeth day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) Supreme court of Louisiana. No. 2508. The State of Louisiana, ex rel. Att'y General, versus Wm. Fagan et al. Writ of error.

Allowed May 13th, 1870.

JOS. P. BRADLEY,
Asso. Just. Sup. Ct. U. S.

Filed May 16th, 1870.

M. P. JULIAN,
Dep'y Clerk Sup. Court.

131 *Bond for writ of error.*

Supreme court of La.

THE STATE OF LOUISIANA, EX REL. S. BELDEN, Att'y General, *vs.* WILLIAM FAGAN ET ALS. } No. 2508.

Know all men by these presents that we, Paul Esteben, Louis Ruch, Jean P. Rouede, William Maylie, Solomon Firmberg, Barthelemi Beaubay, William Fagan, Joseph Dan'l Broderick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers and Butchers' Association of New Orleans, and Charles Cavaroc, as principals, and Hugh Carridy, J. D. Goisser, Felix Coulon, L. Dubos, Cir. Carité, Victor Barousse, Raymond Delord, Dominique Durroux, Jean Despaux, J. Ad. Hémécourt, Hugh McClosky, Carrere & Pierre, L. Poysse, Guillaume Dontagnan, Bernot Castaz, Ant. Billand, Frank Hener, P. Sarthou, T. Barthont, Guillaume Tujaque, N. Sirechon, Philippe Mailhes, H. Cestae, L. Monlor, Thomas Schorr,
132 Patrick Irwin, Benj. Miller, J. S. Simonds, Richard England, Jean Mourras, D. Dontagnan, August Mourras, D. Tavesac, Dominique Tourar, Pierre Pradere, Jean Darac, Philipe Abadie, H. F. Hall, Irenée Soulé, Guillaume Soulé, H. Levy, Jean Lafitte, as sureties, are held and firmly bound unto The State of Louisiana, and any and all other parties in interest, in the full and just sum of one hundred thousand dollars, to be paid to The State of Louisiana and all other parties in interest, its or their certain attorneys, executors, administrators, or assigns; to which payment, well and

truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at a session of the supreme court of the State of Louisiana, held at New Orleans the 9th of May, 1870, in a suit
133 depending in said supreme court, wherein The State of Louisiana, on the relation of S. Belden, attorney general, was plaintiff, and William Fagan and the others above named were defendants, a judgment was rendered against the said W'm Fagan & others above-named, defendants; and the said W'm Fagan and the others above named having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana, citing it to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said W'm Fagan and the others above-named, his co-principals and defendants, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

134 Sealed and delivered in the presence of—
(Signed) J. Q. A. FELLOWS. [SEAL.]

(Signed)	PAUL ESTÉBEN. [L. S.]	(Signed)	HUGH CASSIDY.
"	LOUIS RUCH. [L. S.]	"	J. D. GOISSER.
"	J. P. ROUEDE.	"	FELIX CONLON.
"	WILLIAM MAYLIE. [L. S.]	"	S. DUBOS.
"	S. FIRMBERG.	"	CIR. CARITE.
"	B. BEAUBAY.	"	VICTOR BAROUSSE.
"	W'M FAGAN.	"	RAYMOND DELORD.
"	JOSEP. D. BRODERICK.	"	D'QUE DURROUX.
"	N. SEIBEL.	"	JEAN DESPAUX.
"	MARTIN LANNES.	"	J. AD. HÉMÉCOURT, for $10,000 00.
"	J. GITZINGER.		
"	J. F. AYCOCK.	"	HUGH MCCLOSKEY, for $10,000 00.
"	DOMINIQUE VERGEZ.		
"	C. CAVAROC.	"	CARRERE & PIERRE.

135

(Signed)	L. PAYSSE.	(Signed)	PATRICK IRWIN, for five thousand dollar, $5,000.
"	G. DANTAGNAN.		
"	BERNAT CASTAZ.		
"	AD'N BILLAND.	"	B. MILLER.
"	FRANK HENER.	"	J. S. SIMONDS.
"	P. SARTHOU.	"	RICHARD ENGLAND.
"	A. BARTHET.	"	JEAN MAUMUS.
"	G. TUJAQUE.	"	D. DANTAGNON.
"	N. FRÉCHON, $5,000.	"	AUGUSTE MAUMUS.
"	PHILIPPE MAILHE, $4,000.	"	+D. DAVEZAC.
		"	Witness to the mark of D. Davezac, M. Fagan.
"	R. CESTAE.		
"	L. MOULOR, for $16,000 00.		TONZAN DOMINIQUE.
"	THO'S SCHORR, $4,000, four thousand.	"	PIERRE PRADERE.
		"	JEAN DARAN.

(Signed.) PHILIP his + mark. ABADIE.
" Witness to the mark of Philippe Abadie, Gervais W. Arnoult.

(Signed.) H. F. HALL, two thousand dollars.
" IRENÉE SOULÉ.
" GUILLAUME SOULÉ.
" H. LEVY.
" JEAN LAFITTE.

136 Approved, May 13th 1870.
(Signed)
JOS. P. BRADLEY,
Asso. Just. Sup. Court, U. S.

Filed May 16th, 1870.
(Signed)
M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

136*a* THE UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States to the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerks' office of the supreme court of the State of Louisiana, wherein Paul Esteben, Louis Ruch, Jean P. Rouede, William Maylie, Solomon Firmberg, Barthelemi Beaubay, William Fagan, Joseph Daniel Broderick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers & Butchers' Association of New Orleans, and Charles Cavaroc are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

JOS. P. BRADLEY,
Asso. Just. Sup. Ct. U. S.

(Indorsed:) Supreme court of Louisiana. No. 2508. State of La., ex rel. Att'y General, vs. W'm Fagan et als. Citation.

Marshal's return.

Received May 18, 1870, by the U. S. marshal, and on the 20th day, same month and year, served a copy of the within citation on The State of Louisiana, through Simeon Belden, attorney general of said State, by delivering the same to him (said att'y) in person at his office, No. 26 St. Charles street, in this city.

New Orleans, May 20th, 1870.

S. W. REED,
D'y U. S. Marshal.

Supreme court of La.

Filed June 1st, 1870.

M. P. JULIAN, *Dep'y Clerk.*

Citation.

Supreme court of La.

STATE OF LOUISIANA, EX REL. S. BELDEN, Attorney General, *vs.* W'M FAGAN ET ALS. } No. 2508.

THE UNITED STATES OF AMERICA, *State of Louisiana:*

The President of the United States to the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washing-
137 ton on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Paul Esteben, Louis Ruch, Jean P. Rouede, William Maylie, Solomon Firmberg, Barthelemi Beaubay, William Fagan, Joseph Daniel Broderick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, Dominique Verges, The Live Stock Dealers and Butchers' Association of New Orleans, and Charles Cavaroc, are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

(Signed) JOS. P. BRADLEY,
138 *Asso. Just. Sup. Court U. S.*

Marshal's return.

Received May 18th, 1870, by the U. S. marshal, and on the 20th day, same month and year, served a copy of the within citation on the State of Louisiana, through Simeon Belden, attorney general of said State, by delivering the same to him (said attorney) in person, at his office, No. 26 St. Charles street, in this city.

New Orleans, May 20th, 1870.

(Signed) S. W. REED,
Dep'y U. S. Marshal.

Supreme court of La.

Filed June 1st, 1870.

(Signed) M. P. JULIAN,
Dep'y Clerk.

139 *Certificate.*

UNITED STATES OF AMERICA,
Supreme court, E. D., State of Louisiana:

I, M. P. Julian, dep'y clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify that the foregoing one hundred and thirty-eight (138) pages contain a true copy of the transcript of the proceedings had in the fifth district court for the

parish of Orleans, in a certain suit wherein State of Louisiana, ex rel. S. Belden, Attorney General, was plaintiff, and William Fagan et als. were defendants, and also of the proceedings had in this supreme court on the appeal taken by said William Fagan et als., which appeal is now on the files thereof under No. 2508.

In testimony whereof I have hereunto set my hand and affixed
140 the seal of said court, at the city of New Orleans, this the twenty-first day of July, anno Domini eighteen hundred and seventy, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.]

M. P. JULIAN,
Dep'y Clerk.

(Indorsement on cover:) No. 479. Paul Esteben, L. Ruch, J. P. Rouede, W. Maylie, S. Firmberg, B. Beaubay, W'm Fagan, J. D. Broderick, N. Seibel, M. Lannes, J. Gitzinger, J. P. Aycock, D. Verges, The Live Stock Dealers & Butchers' Association of New Orleans, and Charles Cavaroc, plaintiffs in error, vs. The State of Louisiana, ex. rel. S. Belden, Attorney General. Louisiana sup. court.
Filed 30th August, 1870.